TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No ~~220~~ 63.

S. A. AND S. C. HASELTINE AND S. I. AND L. K. HASELTINE, PLAINTIFFS IN ERROR,

vs.

THE CENTRAL NATIONAL BANK OF SPRINGFIELD, MISSOURI.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

FILED MAY 12, 1900.

(17,760.)

(17,760.)

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vs.

THE CENTRAL NATIONAL BANK OF SPRINGFIELD, MISSOURI.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

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1 UNITED STATES OF AMERICA, *sct:*

The President of the United States of America to the judges of the supreme court of Missouri, division No. 1, Greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said supreme court, before you, between The Central National Bank of Springfield, Missouri, and S. A. and S. C. Haseltine and S. I. and L. K. Haseltine, a manifest error hath happened, to the great damage of the said S. A. Haseltine *et al.*, as by their complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, D. C., not exceeding thirty days from the date of signing the citation, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court.

Issued at office, in Springfield, this 19th day of March, A. D. 1900.

{ Seal of the United States Circuit Court, Southern Division of the Western Judicial District of Missouri. }

SARAH A. LATHIM, *Clerk*,
By REUBEN Y. THOMSON,
Deputy Clerk.

Allowed.
THEO. BRACE,
P. Judge, Division No. 1, *Supreme Court of Missouri.*

[Endorsed:] #9037. United States circuit court, southern division of the western district of Missouri. The Central National Bank *vs.* Haseltine *et al.* Writ of error. Filed Apr. 5, 1900. Jno. R. Green, clerk.

SOUTHERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI, *sct:*

I do hereby return due and perfect obedience to the within writ, and do herewith, under the seal of said supreme court, distinctly and openly, send the record and proceedings aforesaid, with all things concerning the same.

Witness my hand as clerk and the seal of said court.

Done at office, in Jefferson City, this 16th day of April, A. D. 1900.

[Seal of the Supreme Court of Missouri.]

JNO. R. GREEN, *Clerk*,
By —— ——, *Deputy Clerk.*

2 UNITED STATES OF AMERICA, *sct:*

To the Central National Bank of Springfield, Missouri, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, D. C., thirty days from and after the day this citation bears date, pursuant to a writ of error *filed in* issued from the clerk's office of the circuit court of the United States for the southern division of the western district of Missouri and filed in the office of the clerk of the supreme court of Missouri, wherein S. A. Haseltine *et al.* are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Theodore Brace, judge of the supreme court of the State of Missouri, this fifth day of April, in the year of our Lord one thousand nine hundred.

THEO. BRACE, *Judge.*

[Endorsed:] # 9037. United States circuit court, southern division of the western district of Missouri. Haseltine *et al. vs.* The Central National Bank. Citation.

UNITED STATES OF AMERICA, *Western District of Missouri,* } *ss:*

I hereby acknowledge due service of the within citation this seventh day of April, A. D. 1900.

MASSEY & TATLOW,
Attorney for Defendant in Error.

3 In the Supreme Court of the United States, October Term, 1900.

THE CENTRAL NATIONAL BANK, Respondent in Error,
vs.
S. A. HASELTINE ET AL., Appellant- in Error.
} Assignment of Error and Prayer for Reversal.

Now come appellants in error and state to your honor that errors have been committed by the supreme court of Missouri against the rights of your appellants, in this:

I.

Appellants were entitled to the rights of certain credits applied upon the note of respondent under the Revised Statutes of the United States of 1878, sec. 5198.

II.

Appellants are entitled to the said credits under the said United States statutes a*nd* construed by the Supreme Court of the United

States in the case of Brown *vs.* Marion National Bank, 169 U. S., 416.

III.

That the decision against appellants is also against the statutes of Missouri. Act of April 21st, 1891, page 170.

IV.

That the decision against appellants is also against the prior decisions of Missouri—see Maniteau National Bank *vs.* Miller, 73 Missouri, 187—which last case was subsequent to the case of Burnett *vs.* National Bank, 98 U. S., 555, and is indirectly approved in the case of Brown *vs.* Marion National Bank, 169 U. S., 416.

V.

Said judgment is for 8 % interest, when the law of Mo. only provides for 6 % when no rate is agreed upon, or, as in this case, where the rate is usurious and is forfeited..

4 Appellants ask that the judgment in the above-entitled case be reversed, and that appellants be permitted to have their joint and rightful claims.

S. A. HASELTINE &
GEO. S. RATHBUN,
Att'ys for Appellants.

[Endorsed:] # 9037. In the Supreme Court of the U. S. The Central National Bank, respondent in error, *vs.* S. A. Haseltine *et al.*, appellant- in error. Assignment of errors and prayer for reversal. Filed Apr. 5, 1900. Jno. R. Green, clerk. Rathbun & Haseltine, att'ys for appellants in error.

5 In the Supreme Court of Missouri.

STATE OF MISSOURI, *sct:*

Be it remembered that heretofore, to wit, on the 18th day of January, 1898, there was filed in the clerk's office of the supreme court of the State of Missouri a transcript, wherein The Central National Bank was plaintiff, respondent, and S. A. Haseltine *et al.* were defendant-, appellants; which said transcript is in words and figures as follows, viz:

Transcript of the record and proceedings had in our Greene county circuit court, in the cause wherein The Central National Bank is plaintiff and S. A. Haseltine *et al.* are defendants, to wit:

Be it remembered that on the 24th day of December, 1896, there was filed in the office of the clerk of the circuit court a petition in the above-entitled cause; which said petition is in the words and figures following, to wit:

In the Circuit Court of Greene County, Mo., January Term, 1897.

CENTRAL NATIONAL BANK, a Corporation, Plaintiff,
vs.
S. A. HASELTINE, S. C. HASELTINE, S. I. HASELTINE, & L. K. Haseltine.

Plaintiff states that it is a corporation duly incorporated under the laws of the United States as a national bank of deposit and discount.

That on June 15th, 1896, for value received, the above-
6 named defendants executed and delivered to plaintiff their promissory note, in which they agreed thirty days after date to pay to the plaintiffs or order $2,240.00, with interest at 8 % per year from maturity; if not paid annually, to be compounded; which said note is in words and figures as follows:

$2,240.00. SPRINGFIELD, Mo., *June 15th*, 1896.

Thirty days after date we or either of us, as principals, promise to pay to the Central national bank or order twenty-two hundred and forty dollars, for value received, at the Central national bank, at Springfield, Mo., with interest at the rate of eight per cent. per annum from maturity and payable annually, and if not so paid to be compounded.

(Signed) S. A. HASELTINE.
S. C. HASELTINE.
S. I. HASELTINE.
L. K. HASELTINE.

Plaintiffs further say that the said defendants nor neither of them have paid said note or the interest thereon or any part thereof, but are now justly indebted to this plaintiff in the sum of $2,240.00, with interest at eight per cent. from June 15th, for which amount plaintiffs pray judgment, with cost of suit.

B. U. MASSEY,
W. D. TATLOW,
Attorneys for Plaintiff.

And on the back of said petition is the following endorsement, to wit:

Filed Dec. 24, 1896. J. M. Yarbrough, clerk.

7 Circuit Court, Greene County, January Term, 1897.

1st Judicial Day, Monday, January 11th, 1897.

STATE OF MISSOURI, } ss:
County of Greene, }

Be it remembered that a regular term of the circuit court within and for the county of Greene and State of Missouri was begun and held at the circuit court house, in the city of Springfield, in said county of Greene, in the twenty-third judicial circuit of Missouri, on the second Monday in January, being the 11th day of January, in

the year of our Lord eighteen hundred and ninety-seven, at which were present:

Hon. Jas. T. Neville, judge of the 23rd judicial circuit of Missouri.
J. S. Owen, sheriff of Greene county, Missouri.
A. D. Allen, stenographer of said court.
J. M. Yarbrough, clerk of said court.

Amended Answer. Filed by Leave of Court.

CENTRAL NATIONAL BANK, Plaintiff,
vs.
S. A. HASELTINE ET AL., Defendants.

Now, at this day, come the above defendants, by attorney, and files herein, by leave of court, their amended answer to the petition of plaintiff heretofore filed herein in the above cause.

Which said amended answer is in the following words and figures, to wit:

8 In the Circuit Court of Greene County, State of Mo., Jan. Term 1897.,

THE CENTRAL NATIONAL BANK, a Corporation, Plaintiff,
vs.
S. A. HASELTINE, S. C. HASELTINE, L. K. HASELTINE, & S. I. Haseltine.

Defendants, for answer to the petition of plaintiff filed herein, come and admit that they executed the note sued on, but deny that the said note remains due and unpaid, as alleged, but that said note consists partly of usurious interest, as hereinafter stated; and defendants aver that said note is subject to certain credits, payments, offsets, demands, and deductions for usury, as hereinafter set forth.

Defendants state that at the time of the execution of said note — all notes preceding it, of which it is a renewal and consolidation, usury was knowingly charged and reserved and is now left in said note, and that at each and during all said loans and extensions the plaintiff was and is a banking corporation, duly incorporated as a national bank under the laws of the United States and subject to the statutes of the United States and the State of Missouri regulating and governing national banks.

Defendants state that S. A. Haseltine and S. C. Haseltine are principals upon said note sued on and upon all notes executed of which it is a renewal note, and that the other defendants are and were only their securities on said notes.

9 And, further answering, defendants say that on the 27th day of June, 1891, defendants S. A. and S. C. Haseltine borrowed of the plaintiff the sum of eight hundred dollars for the period of thirty days, and upon said loan the plaintiff knowingly and usuriously charged and reserved discount in advance to the amount of seven and $\frac{30}{100}$ dollars, which is above and more than the legal rate allowed by the laws of this State.

And, further, defendants say that on July 27th, 1891, defendants borrowed of plaintiffs $100 for 90 days, and therefor plaintiff charged and reserved and received discount in advance in the sum of $3.30, which plaintiff knowingly and usuriously kept from defendant-.

And, further, on July 30th, 1891, said note, nominally for $800, was renewed for 30 days, and plaintiff charged and reserved and received discount to the amount of $9.30, which was knowingly and usuriously done.

And on Sept. 11th, 1891, said defendant- had said note nominally for $800 renewed for 120 days, and plaintiff usuriously and knowingly charged and reserved from the amount so extended or renewed the sum of $27.30.

And on October 28th, 1891, they renewed said nominal amount of $100 and borrowed $125 additional for 60 days, and for the same the plaintiff knowingly and usuriously charged and reserved and received from said sum the sum of $3.66.

And on Dec. 30th, 1891, said note, nominally for $225, was renewed for 60 days, and plaintiff knowingly and usuriously charged and reserved and received discount to the amount of $3.66.

And on Jan. 4th, 1892, defendants borrowed an additional sum of plaintiff for 60 days and gave a note nominally for $500, but plaintiff knowingly and usuriously charged and reserved and received the sum of $8.70.

And on Jan. 12, 1892, the nominal amount of $800 was renewed for 120 days, for which plaintiff knowingly and usuriously charged and reserved and received from the amount extended $27.30.

And on March 2nd, 1892, the nominal amount of $225 was renewed for 90 days, for which plaintiff knowingly and usuriously charged and reserved and received the sum of $5.85.

And on March 5th, 1892, the defendant- borrowed on additional sum of money for 60 days and gave their note nominally for $250, but did not receive said sum, but plaintiff knowingly and usuriously charged and reserved and received the sum of $4.35.

And on March 7th, 1892, the said note, nominally for $500, was renewed for 60 days, and plaintiff knowingly and usuriously charged and reserved and received from the amount extended the sum of $8.70.

And on July 6th, 1892, the said note, nominally for $800, was renewed for 30 days, and plaintiff knowingly and usuriously charged and received and reserved from the amount extended discount to the sum of $7.30.

And on July 18th, 1892, the said note, nominally for $225, was renewed for 30 days, and plaintiff knowingly and usuriously charged and reserved and received from the amount extended the sum of $2.05.

And on Aug. 1st, 1892, the said note, nominally for $800, was extended for 30 days, and plaintiff knowingly and usuriously charged and reserved and received from the amount extended the sum of $7.30.

And on Aug. 20th, 1892, the said note, nominally for $225, was

extended for 60 days, and plaintiff knowingly and usuriously
11 charged and reserved and received from the amount extended the sum of $3.30.

And on Oct. 13th, 1892, the said note, nominally for $800, was renewed for 60 days, and plaintiff knowingly and usuriously charged and reserved and received from the amount renewed the sum of $13.95.

And on October 17th, 1892, the said note, nominally for $225, was partly paid, defendants paying the sum of $25 and renewed a nominal sum of $200 for 30 days, on which plaintiff knowingly and usuriously charged and reserved and received the sum of $3.50.

And on December 15th, 1892, the said nominal sum of $800 was renewed for 60 days, and plaintiff knowingly and usuriously charged and reserved and received the sum of $13.95.

And on the 16th day of January, 1893, the defendant made a note to the plaintiff for $340, due in 60 days, on which the plaintiff charged and reserved and received the sum of $5.95.

And on Jan. 23rd, 1893, the said note, nominally for $200, was renewed for 60 days, and the plaintiff knowingly and usuriously charged and reserved and received from the sum extended the sum of $3.50.

And on Jan. 28th, 1893, the note, nominally for $500, was renewed for 90 days, and plaintiff knowingly and usuriously charged and reserved and received from the amount extended the sum of $12.80.

And on Feb. 16th, 1893, the said note, nominally for $800, was renewed for 90 days, and the plaintiff knowingly and usuriously charged and reserved and received from the amount extended the sum of $20.65.

12 And on March 20th, 1893, the said note, nominally for $340, was extended for 90 days, and the plaintiff knowingly and usuriously charged and reserved and received the sum of $7.80.

And on March 25th, 1893, the said note, nominally for $200, was extended 90 days, and plaintiff knowingly and usuriously charged and reserved and received the sum from said extension of $5.15.

And on May 2nd, 1893, the said note, nominally for $500, was renewed for 90 days, and the plaintiff knowingly and usuriously charged and received the sum of $12.00.

And on May 29th, 1893, the defendants borrowed money of the plaintiff and gave their note therefor for the sum of $600 for 90 days, and the plaintiff knowingly and usuriously charged and reserved and received the sum of $15.50 from said borrowers.

And on May 2nd, 1893, the said note, nominally for $800, was renewed for 90 days, and plaintiff knowingly and usuriously charged and reserved and received the sum of $20.65 from said sum extended.

And on June 30th, 1893, the said note, nominally for $200, was renewed for 90 days, and plaintiff knowingly and usuriously charged and reserved and received the sum of $7.80.

And on June 26th, 1893, the said note, nominally for $200, was

renewed for 90 days, and plaintiff knowingly and usuriously charged and reserved and received the sum of $5.05.

And on Aug. 3rd, 1893, the said note, nominally for $500, was changed to four hundred (400) dollars by a payment of $100 by defendants, and the $400 was extended by renewal for 90 days, and plaintiff knowingly and usuriously charged, reserved, and
13 received the sum of $10.30 from the amount extended.

And on Aug. 23rd, 1893, the said note, nominally for $800, was changed to $700 by a payment of $100 by the defendants, and the renewal note was made for $700 for 90 days, and plaintiff knowingly and usuriously charged and reserved and received the sum of $18.55.

And on Oct. 14th, 1893, the said note-, nominally for $200, $340, and $600 and $400, were united in one note, nominally for the sum of $1,540, which was extended for 60 days, and plaintiff knowingly and usuriously charged and reserved and received the sum of $26.95 from the amount so extended.

And on Nov. 4th, 1893, the note, nominally for $700, was extended 120 days, and plaintiff knowingly and usuriously charged and reserved and received the sum of $24.90.

And on Dec. 16th, 1893, the said note, nominally for $1,540, was extended 60 days, and the plaintiff knowingly and usuriously charged and reserved and received the sum of $26.95.

And on Feb. 17th, 1894, the said note, nominally for $1,540, was renewed for 60 days, and the plaintiff knowingly and usuriously charged and reserved and received the sum of $26.95.

And on March 26th, 1894, the said note, nominally for $700, was extended for 90 days, and the plaintiff knowingly and usuriously charged and reserved and received the sum of $18.00.

And on April 24th, 1894, the said note, nominally for $1,540, was renewed for 60 days, and the plaintiff knowingly and usuriously charged and reserved and received the sum of $26.95.

And on June 20th, 1894, the said notes, nominally for $1,540 and $700, were united, and a note, nominally for $2,240, was renewed for 60 days, and plaintiff knowingly and usuriously charged and reserved and received the sum of $31.35.

14 And on Aug. 27th, 1894, the said note, nominally for $2,240, was extended 60 days, and plaintiff knowingly and usuriously charged and reserved and received usurious interest in the sum of $39.35.

And on Oct. 29th, 1894, the said note, nominally for $2,240, was extended for 90 days, and plaintiff knowingly and usuriously charged and reserved and received the sum of $46.30.

And defendants say that the legal rate of interest in the State of Missouri is and has been during all this time of the making and renewing of the above notes only eight per cent. (8 %) per annum, and that plaintiff knowingly and usuriously charged and reserved and received a greater rate at the making and renewing and extending of each and all of the said notes, in violation of the laws of the State of Missouri and the laws of the United States.

And defendants say that the note sued upon, which is nominally

for $2,240, is largely for usury charged and reserved by the plaintiff, as above set forth, and the whole amount of money charged as discount should be declared forfeited and the plaintiff should have judgment for the principal of said note, and only after deducting the $850 discount above set forth.

Defendants say that the said note sued on is not for money borrowed alone, but consists partly of usury, which is to the amount of $850, which should be deducted from the said note.

And defendants say that the investigation of the defendant's charge of usury charged and reserved involves a long line of accounts, as above set forth, which require many calculations and computations and should be referred to a referee.

Defendants therefore ask that a referee be appointed by this honorable court to fully investigate and report the facts, and with full power to take evidence and report the same as in such cases
15 made and provided, and that defendant- be allowed to deduct the usury from said note sued upon, and for other proper relief.

GEO. S. RATHBUN &
S. A. HASELTINE,
Att'ys for Def'ts.

And on back of said amended answer is the following endorsement, to wit:

Filed Feb. 4th, 1897. J. M. Yarbrough, clerk.

In the Circuit Court of Greene County and State of Missouri, January Term, 1897.

THE CENTRAL NATIONAL BANK, a Corporation, Plaintiff,
vs.
S. A. HASELTINE, S. C. HASELTINE, S. I. HASELTINE, and L. K. Haseltine, Defendants.

Be it remembered that upon the trial of this cause, the same being submitted to this court and a jury waived and said cause coming on to be heard before the Honorable James T. Neville, judge, the following proceedings were had, to wit:

C. W. Hamlin, having been by consent of the parties duly appointed by the court in said cause as referee to find the facts upon the matters submitted to him by the order of said court making his appointment, on this 13th day of March, 1897, submits and files in court his said report and the evidence taken before him in
16 said cause; which report and evidence *was* taken and made in pursuance of said order of court and is as follows:

CENTRAL NATIONAL BANK }
vs.
S. A. HASELTINE ET AL. }

To the honorable court of Greene Co., Missouri:

Having been appointed referee in the above-entitled cause to take testimony and make findings in accordance with the following instructions, to wit:

First. The referee will ascertain how much cash was actually paid or furnished to said defendants or any of them by plaintiff bank of the said sum of $2,240 of the note sued on.

Second. How much interest was reserved or taken out of said loans or discounts set out in defendants' answer and the plaintiff's petition, if any, at the time said respective loans were made.

Third. How much interest of the items of interest or discount set out in defendants' answer and plaintiff's petition was paid by the defendants to said bank, including the amount reserved out of said loans at the time the same were made.

Fourth. The referee will ascertain the entire amount of discount and interest severally charged by the bank in all of the extensions, consolidations, and payments from the time of said loans down to and including the notes sued on.

Fifth. The referee will find all the facts and report his findings to the court.

I beg to submit the following report:

I find there were a number of notes given prior to June 25, 1894, which entered into and being consolidated constitute the notes of date June 25, 1894, for $2,240. I find there was reserved out of the notes which constitute the note now in controversy, at the
17 time the loans were made, the sum of $40.65.

I further find that there *was* paid cash discounts at the date of the several renewals of the notes which constitutes the $2,240 note, as well as the renewal of said note *was* executed, down to Oct. 24, 1894, exclusive of the amounts reserved out of the notes at the time they were originally given, the sum of $566.70, which cash discounts were paid in advance at the date of the several renewals.

I further find that the amounts of discounts and interest severally charged by the bank in all as original loans, the extensions, consolidations, and payments on extensions during the time of said loans down to and including the notes sued on *was* $947.50.

I further find that defendants actually received out of the note, June 25, 1894, of $2,240, or rather out of the note constituting that note, in cash the sum of $2,199.35, making the amount reserved out of the loans at the time they were made $40.65; that the balance of the $947.50 above stated was money paid in cash by defendants to said bank at the dates of the several renewals of all the notes which constitute the one in controversy, as well as also including the moneys paid at the dates of the several renewals on said note.

I further find that it is admitted by the parties to this — that the amount of interest or discount charged by the plaintiff and paid by defendants was in excess of eight per cent. interest.

I also find that the first note given to plaintiff by defendants bore date of July 27, 1891. This note was for $800. The next loan was of the same date, to wit, July 27, 1891, for $100. The next
18 was Oct. 28, 1891; the next, dated Jan. 24, 1892, for $500. The next note was of $250, of date March 5, 1892, and which note was subsequently paid off and did not enter into this note in controversy; consequently is not taken into consideration in this report. The next loan was on the 16th day of Jan., 1893, which amounted to $340. The next was a loan, of date May 29, 1893, for $600. These several notes, upon one of which had been made a payment and credited $100, constitute the note in controversy in this case, and it was at the time of the making originally of the notes above mentioned that the discount of $40.65 was reserved out, the defendants receiving the amount of the notes less the amount reserved, as above specified.

The cash interest or discount paid at the time of the several renewals were as follows:

1st	payment,	made	July	30, 1891,	$9.30;	renewal of		$800	note	for	30 da.
2nd	"	"	Sept.	11, 1891,	27.30;	"	"	800	note	for	120 da.
3rd	"	"	Dec.	30, 1891,	3.60;	"	"	225	"	"	60 "
4th	"	"	Jan.	12, 1892,	27.30;	"	"	800	"	"	120 "
5th	"	"	Mar.	2, 1892,	5.85;	"	"	225	"	"	90 "
6th	"	"	Mar.	7, 1892,	8.70;	"	"	500	"	"	60 "
7th	"	"	May	6, 1892,	13.95;	"	"	800	"	"	60 "
8th	"	"	July	6, 1892,	7.30;	"	"	800	"	"	30 "
10th	"	"	Aug.	16, 1892,	2.05;	"	"	225	"	"	30 "
11th	"	"	Aug.	29, 1892,	3.30;	"	"	800	"	"	60 "
12th	"	"	Oct.	13, 1892,	13.95;	"	"	800	"	"	60 "
14th	"	"	Dec.	15, 1892,	13.95;	"	"	800	"	"	60 "
15th	"	"	Jan.	23, 1893,	3.50;	"	"	200	"	"	60 "
16th	"	"	Jan.	28, 1893,	12.80;	"	"	500	"	"	90 "
17th	"	"	Feb.	16, 1893,	20.65;	"	"	800	"	"	90 "
18th	"	"	Mar.	20, 1893,	5.80;	"	"	340	"	"	90 "

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19th	payment,	made	Mar.	20, 1893,	$5.15;	renewal of		$200	note	for	90 da.
20th	"	"	May	2, 1893,	12.80;	"	"	500	"	"	90 "
21st	"	"	May	2, 1893,	20.65;	"	"	800	"	"	90 "
22nd	"	"	June	30, 1893,	7.80;	"	"	340	"	"	90 "
23rd	"	"	June	26, 1893,	5.05;	"	"	200	"	"	90 "
24th	"	"	Aug.	3, 1893,	10.30;	"	"	400	"	"	90 "
25th	"	"	Aug.	23, 1893,	18.55;	"	"	700	"	"	90 "
26th	"	"	Oct.	24, 1893,	26.95;	"	"	1,540	"	"	60 "
27th	"	"	Nov.	4, 1894,	24.20;	"	"	700	"	"	120 "
28th	"	"	Dec.	16, 1893,	26.95;	"	"	1,540	"	"	60 "
29th	"	"	Feb.	17, 1894,	26.95;	"	"	1,540	"	"	60 "
30th	"	"	Mar.	6, 1894,	18.00;	"	"	700	"	"	90 "
31st	"	"	Apr.	24, 1894,	26.95;	"	"	1,540	"	"	60 "
32nd	"	"	June	20, 1894,	31.35;	"	"	2,240	"	"	60 "
33rd	"	"	Aug.	27, 1894,	39.35;	"	"	2,240	"	"	60 "
34th	"	"	Oct.	29, 1894,	46.30;	"	"	2,240	"	"	90 "
35th	"	"	Jan.	30, 1895,	39.20;	"	"	2,240	"	"	60 "
36th	"	"	Apr.	17, 1895,	39.20;	"	"	2,240	"	"	60 "
37th	"	"	June	5, 1895,	30.20;	"	"	2,240	"	"	60 "
38th	"	"	Aug.	7, 1895,	39.20;	"	"	2,240	"	"	60 "
39th	"	"	Oct.	9, 1895,	39.20;	"	"	2,240	"	"	60 "
40th	"	"	Dec.	11, 1895,	57.85;	"	"	2,240	"	"	60 "
41st	"	"	Mar.	13, 1896,	57.85;	"	"	2,240	"	"	90 "
42nd	"	"	June	14, 1896,	57.85;	"	"	2,240	"	"	90 "
9th	"	"	July	18, 1892,	7.30;	"	"	800	"	"	60 "

Making aggregate payments of $906.85.

This seeming discrepancy in the notes given I account for in the consolidation and partial payments of the notes originally given, and some of the payments, the dates of which do not seem to
20 correspond exactly with the proper dates of payments or renewals of the notes for the time it had run, are explained in the fact that the notes were not always renewed on the day when they fell due.

The foregoing tabulated statement of the amounts of interest or discount paid on the different notes at the different times I gave as a summary of the entire amount paid from the date of the first loan down to and including the last payment made on the note in controversy. However, in this case defendants in their answer are only asking credit for the payment down to and including October 29th, 1894, which aggregate the sum of $540.40.

The costs incurred before me constitutes only the charges of the stenographer, Miss Alice T. Barrett, whose bill is hereto attached, amounting to $4.50, and whatever may be taxed in favor of the referee, which he thinks is reasonably worth $25.00.

All of which is respectfully submitted, with the testimony taken before me, for the consideration and action of the court.

C. M. HAMLIN, *Referee.*

And which report is based upon the following evidence, to wit:

CENTRAL NATIONAL BANK }
vs.
S. A. HASELTINE ET AL. }

Deposition Taken Before Hon. C. W. Hamlin, as Referee, at his Office, in the City of Springfield, on the 8th Day of Feb., A. D. 1897.

S. A. HASELTINE, being produced and sworn, upon his oath testified as follows:

By Mr. RATHBUN: Go on and state the fact in relation to
21 this matter.

A. The discount on the $800 note *was* given on the 27th day of June, 1891, amounting to $7.30 was reserved out of the $800 face of the note. (It is admitted that the rate of interest charged was in excess of eight per cent. interest.) The next one that was reserved out was on July 27, 1891, on a loan of one hundred dollars for ninety days, when $3.30 was paid, the note being made for that amount more than the amount of money furnished.

The next was on Oct. 28th, 1891, when $3.60 was reserved out of the note again.

By Mr. HAMLIN: You mean that the note was given for $3.66 more than was due at this time?

A. No; that amount of money was reserved out of the face of the note. They furnished us the face of the note less that amount of money, which was ten per cent. on the amount of the loan for the time that

it ran, and on Jan. 4, 1892, defendant made another loan for $500 for sixty days, which is a part of the $2,240 note, and these various notes above mentioned were also a part of the $2,240 note, and at that time the bank reserved out of the $500, out of the face of the note, $8.70; and the next was on Mar. 5, 1892. There was $250 note. This was subsequently paid off. This note did not enter into the $2,240 note. At that time was reserved out $4.35 of the amount furnished the defendant from the face of the note.

The next was on the 16th day of Jan., 1893, when the defendants borrowed $340 for sixty days; $5.95 was then reserved out of the amount of money as shown by the face of the note. This also entered into the $2,240, the one sued on. Next loan was May 29, 1893, for ninety days, and the plaintiff reserved out of the amount furnished the defendants, as shown by the face of the not-, $15.50. This was a $600 note. That was also a part of the $2,240 note sued on.

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All these other extensions of the several notes and their consolidation and the interest was paid at the rate of 10%. These amounts mentioned as reserved are discounts taken out of the original loans. All the other items of discount alleged in the answer to have been paid are items for money actually paid by the defendants at the time said discount was made and for the purpose of the discount, as alleged in said answer, and which apppears as follows.

All of the payments in the answer and all of the discounts were upon notes which entered into the $2,240 note, with the exception of one payment of $4.35 discount on the $250 note of March 5, 1892.

The following were paid at the time the notes were renewed:

1st	payment,	made	July	30, 1891,	$9.30;	renewal of		$800	note	for	30 da.
2nd	"	"	Sept.	11, 1891,	27.50;	"	"	800	"	"	120 "
3rd	"	"	Dec.	30, 1891,	3.60;	"	"	225	"	"	60 "
4th	"	"	Jan.	12, 1892,	27.30;	"	"	800	"	"	120 "
5th	"	"	Mar.	2, 1892,	5.85;	"	"	225	"	"	90 "
6th	"	"	Mar.	7, 1892,	8.70;	"	"	500	"	"	60 "
7th	"	"	May	6, 1892,	13.95;	"	"	800	"	"	60 "
8th	"	"	July	6th, 1892,	7.30;	"	"	800	"	"	30 "
9th	"	"	July	17, 1892,	2.05;	"	"	225	"	"	30 "
10th	"	"	Aug.	8, 1892,	7.30;	"	"	800	"	"	30 "
11th	"	"	Aug.	20, 1892,	3.30;	"	"	225	"	"	60 "
12th	"	"	Oct.	13, 1892,	13.95;	"	"	800	"	"	60 "
13th	"	"	Oct.	27, 1892,	3.50;	"	"	200	"	"	30 "
14th	"	"	Dec.	15, 1892,	13.95;	"	"	800	"	"	60 "

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15th	"	"	Jan.	23, 1893,	3.50;	"	"	200	"	"	60 "
16th	"	"	Jan.	23, 1893,	12.80;	"	"	500	"	"	90 "
17th	"	"	Feb.	16, 1893,	20.65;	"	"	800	"	"	90 "
18th	"	"	Mar.	20, 1893,	7.80;	"	"	340	"	"	90 "
19th	"	"	Mar.	20, 1893,	5.15;	"	"	200	"	"	90 "
20th	"	"	May	2, 1893,	12.80;	"	"	500	"	"	90 "
21st	"	"	May	2, 1893,	20.65;	"	"	800	"	"	90 "
22nd	"	"	June	30, 1893,	7.80;	"	"	340	"	"	90 "
23rd	"	"	June	26, 1893,	5.05;	"	"	200	"	"	90 "
24th	"	"	Aug.	3, 1893,	10.30;	"	"	400	"	"	90 "
25th	"	"	Aug.	23, 1893,	18.55;	"	"	700	"	"	90 "
26th	"	"	Oct.	14, 1893,	26.95;	"	"	1,540	"	"	60 "
27th	"	"	Nov.	4, 1893,	24.20;	"	"	700	"	"	120 "

28th	payment,	made	Dec.	16,	1893,	26 95;	renewal of	$1,540	note	for	60 da.
29th	"	"	Feb.	17,	1894,	26.95;	" "	1,540	"	"	60 "
30th	"	"	Mar.	26,	1894,	18.00;	" "	700	"	"	90 "
31st	"	"	Apr.	24,	1894,	26.95;	" "	1,540	"	"	60 "
32nd	"	"	June	30,	1894,	31.35;	" "	2,240	"	"	60 "
33rd	"	"	Aug.	27,	1894,	39.35;	" "	2,240	"	"	60 "
34th	"	"	Oct.	29,	1894,	46.30;	" "	2,240	"	"	90 "

Payment 34 is also included in the other petition.

By Mr. RATHBUN:

Q. Well, now, Mr. Haseltine, at the time of the payment of these interests that you have spoken of, to whom were those payments made and where, at the bank?

A. Yes, sir; they were made at the bank, to Joseph Sheppard as cashier.

Q. What was said in relation to the amount of interest you were paying?

24 A. When the new law went into effect, in June, 1891, I told Mr. Sheppard, cashier of the Central national bank at that time, that my brother was getting the benefit of the eight per cent. law at the Greene County bank, and asked him to do the same with us there, and he said he could not afford to do so, because we were not carrying enough deposits with them.

Q. What was the amount charged you in the way of interest that was retained from the amounts you have spoken of—for interest and discount on those notes?

A. All but two different times it was ten per cent. upon the face of the note, in advance. Two different times, as shown by the figures, it was 8 % on the face of the note, which also includes 8 % on the discount included in the note when it was originally made of 10 %.

Q. When was the first reservation made of any part or portion of the money that was loaned you that was included in the first note?

A. In July, 1891.

Q. Then the entire amount was not paid to you? A part was kept out as interest?

A. Yes, sir.

Q. You did not receive the whole amount of the note?

A. No, sir.

Q. That was the first?

A. That was the first; yes, sir.

Cross-examination by B. U. MASSEY:

Q. Then the amount, Mr. Haseltine, that was reserved and retained out of the loan, which afterwards constituted this $2,240, were: First, $7.30, made July 27, 1891; next, $8.70, January 4, 1892; next, $3.30, retained same day (July 27, 1891); next,

25 $5.85, January 16, 1893, and $15.50, May 29, 1893. Are those correct?

A. Yes, sir.

Q. And this aggregate- the sum of what?

A. $40 95.

Q. Then the total amount of the money that you actually received from the bank of the money embraced in this one note of $2,240 was $2,199.35?

A. Yes, sir.

Q. The principal of this $2,240 still remains due and unpaid, unless paid by penalties sued for and offsets in this claim?

A. Yes, sir.

Which was all of the evidence offered before the referee and constitutes all the evidence in said cause; and, no objections being made to the report and finding of the referee, and no other evidence offered by either party, defendants asked the court to declare the law to be:

I. If the court finds from the evidence that in making the original loan to the defendants, and that the note sued on embraces in whole or in part said original notes and money loaned to the defendants, and that plaintiff charged and reserved from the defendants usurious interest upon said renewal notes and knowingly charged and demanded the defendants to pay such usurious interest, then the court declares the law to be that in this suit plaintiff can only recover the money actually loaned and paid to the defendants, less the entire amount of interest so paid by the defendants to the plaintiff.

II. If the court finds from the evidence that the taint of usury is attached to the original note, and that the note sued on
26 is but one of the renewal notes embracing, in whole or in part, said original note, and that usurious interest of more than 8 %, eight per cent., was asked, demanded, reserved, or received by the plaintiff, and the same was paid by the defendants to plaintiff or embraced in said note, and that the same was knowingly done by the plaintiff, then the court declares that said taint of usury follows down through the whole of said renewals, and the court will find for the defendants and give *him* credit upon the note sued on for all the interest *he* has paid from the beginning.

III. The court finds from the referee's report that plaintiff charged and reserved and received on the note sued on and the notes which entered into it more than (8 %) eight per cent., the legal rate of interest in the State; that under the United States statute all interest was forfeited which the notes and their renewals bore or was carried with them, and therefore said payments are to be credited upon the amount which defendant owed the plaintiff, and plaintiff is entitled to the face amount of said note of $2,240, less the said credits and payments, which amount to $580, and the finding will be for the plaintiff for the said sum of $1,660.

Which declarations of law numbered 1, one, (2) two, and (3) three the court refused to give, and to which rofusal of the declarations thus prayed for the defendants then and there at the time excepted.

And thereupon the court, on the — day of March, 1897, rendered its finding and udgment for the plaintiff as follows (here copy judgment):,

Circuit Court, Greene County.

27 CENTRAL NATIONAL BANK, Plaintiff,
vs.
S. A. HASELTINE ET AL., Defendants.

NOTE.—Trial by court; verdict for plaintiff for $2,199.00.

Now, at this day, come above parties, plaintiff and defendants, by their respective attorneys, and this cause coming on to be heard the said parties announce ready for trial.

Thereupon, issue being joined and a jury waived by consent, this cause is submitted to the court for hearing, and the court proceeds to hear the evidence, and, all and singular the premises being seen and heard, the court finds the issues in favor of the plaintiff; and this being an action upon a certain instrument for the payment of money, to wit, a promissory note, whereby plaintiff's demand is ascertained, and the court doth assess the amount due and owing from the defendants to plaintiff on the instrument herein sued on at the sum of two thousand one hundred and ninety-nine dollars ($2,199) as debt and damages

It is therefore considered, adjudged, and ordered by the court that the plaintiff, Central National Bank, a corporation, have and recover of and from the defendants, S. A. Haseltine, S. C. Haseltine, L. K. Haseltine, and S. I. Haseltine, the sum of two thousand one hundred and ninety-nine dollars ($2,199) as debt and damages aforesaid assessed by the court, with interest thereon, at the rate of 8 % per annum, from this date until paid, together with all costs in this behalf laid out and expended, for which execution may issue.

And on the 13th day of March, 1897, and within four days after said finding and judgment, defendants filed their motion for a new trial and to set aside said judgment and finding, and which
28 said motion is as follows:

In the Circuit Court of Greene Co., January Term, 1897.

THE CENTRAL NATIONAL BANK, Plaintiff,
vs.
S. A. HASELTINE, S. C. HASELTINE, S. I. HASELTINE, & L. K. Haseltine, Defendants.

Now come defendants and ask the court to set aside the verdict and judgment and grant a new trial in the above cause for the following reasons, to wit:

1st. Because the finding is against the evidence.

2nd. Because the finding is against the law and the evidence.

3rd. The court erred in refusing the declarations of law as asked by the defendants.

4th. Upon the law and the evidence, the judgment should have been for the defendants.

5th. The first transaction upon the note sued on being usurious and the evidence showing that plaintiff, a national bank, asked, demanded, received, and reserved usurious interest, the entire inter-

est was forfeited, and all payments should have been credited upon the note in suit, and the court erred in refusing to so apply said credits.

RATHBUN & SON & HASE-TINE,
Att'ys for Defendants.

29 And which said motion the court, on the — day of March, 1897, overruled, and to which ruling and order of the court in overruling said motion the defendants then and there at the time excepted.

And thereupon defendants filed their affidavit and bond for an appeal, which is granted and by order of the court, of record, time for filing bill of exceptions extended to the first day of the next May term of this court, 1897. And that the above matters and things, rulings and exceptions, may be made a part of the record, defendants tender this their bill of exceptions, and pray that the same may be signed and sealed as such, which is accordingly done this 5th day of April, 1897.

JAMES T. NEVILLE. [SEAL.]

And on the back of said bill of exceptions is the following endorsements, to wit:

Filed April 5, 1897. J. M. Yarbrough, clerk.

STATE OF MISSOURI, } *ss:*
County of Greene, }

I, J. M. Yarbrough, clerk of the circuit court within and for the county and State aforesaid, do hereby certify that the above and foregoing is a full, true, and complete transcript of the record and proceedings had in our Greene county circuit court in the above-entitled cause as fully as same appears of record and on file in my office, as required by law.

[SEAL.] In testimony whereof I have hereunto set my hand as clerk of the circuit court and affixed the seal thereof.

30 Done at office, in the city of Springfield, Missouri, this 11th day of June, A. D. 1897.

J. M. YARBROUGH, *Cir. Clerk.*

And afterwards, to wit, on the 13th day of January, 1900, the further following proceedings were had in said cause, viz:

CENT. NAT. BANK, Resp., }
vs. }
S. A. HASELTINE ET AL., App. }

Come now the said parties, by attorneys, and after argument herein submit these causes to the court.

And afterwards, to wit, on the 20th day of February, 1900, the further following proceedings were had in said cause, viz:

CENTRAL NATIONAL BANK, a Corporation, Respondent,
vs.
S. A. HASELTINE, S. C. HASELTINE, S. I. Haseltine, and L. K. Haseltine, Appellants.
} Transferred from St. Louis Court of Appeals.

Now, at this day, come again the parties aforesaid, by their respective attorneys, and the court here, being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid in form aforesaid by the said Greene county circuit court rendered, be in all things affirmed and stand in full force and effect, and that the said respondent recover against the said appellants its costs and charges herein expended and have therefor execution. (Opinion filed.)

31 Which said opinion is in words and figures as follows, to wit:

In the Supreme Court of Missouri, October Term, 1899, Division No. 1.

THE CENTRAL NATIONAL BANK, Respondent,
vs.
S. A. HASELTINE ET AL., Appellants.
} No. 9037.

This cause was transferred to this court by the St. Louis court of appeals, on the ground that an authority exercised under the United States is drawn in question, and hence this court has jurisdiction under section 12, art. VI, of the Constitution.

The controversy is this: The plaintiff, a national bank organized under the laws of the United States, sues the defendants on a promissory note for $2,240. The defendants admit the execution of the note, but claim certain credits and set-offs, arising out of the fact that the note sued on is the consolidation of various smaller notes, which had matured before the execution of this note, and that the defendants had paid to the plaintiff, within two years before the execution of this note, upon such other notes and upon this note usurious interest, aggregating $580, which sum they asked to have deducted from the principal sum of $2,240 represented by this note, thereby reducing the plaintiff's claim to $1,660.

The trial court referred the case to a referee to ascertain how much cash the plaintiff paid the defendants on the note sued on, how much interest had been reserved or taken out of all the notes, and

32 how much interest was paid in cash by defendants not reserved. The referee found that defendants had received on this note of $2,240 the sum of $2,199.35; that the interest reserved by the plaintiff out of this note was $40.65; "that there had been paid by defendants, as cash discounts on said loans, up to October 24th, 1895, the sum of $566.70; that the whole amount of interest paid and deducted by the bank on all of said loans from the beginning to the end was $947.50; that these payments were made in excess of the legal rate for said loan." Thereupon the court entered judgment for the plaintiff for $2,199.35, that being the face of the

note sued on after deducting the discount of $40.65, reserved when the note was executed.

Defendants appealed.

I.

Formerly it was the rule in Missouri that "one who voluntarily pays unlawful interest upon a usurious contract cannot recover it by suit." Ransom *v.* Hayes, 39 Mo., 445; Rutherford *v.* Williams, 42 Mo., 18; Ferguson *v.* Soden, 111 Mo., 208. Nor could usurious interest once paid be applied as credits upon the note when it was sued on. Perrine *v.* Poulson, 53 Mo., 309; Kirkpatrick *v.* Smith, 55 Mo., 389. And the principal, with legal interest, could be recovered, notwithstanding the usurious payment. Of course, if the usurious interest had not been actually paid, but only promised, the courts would not enforce the unlawful promise and would render judgment only for the principal, with lawful interest.

This was the law until the act of November 20th, 1855 (R. S. 1855, ch. 85, sec. 5, p. 890), when it was enacted that in a suit upon a note, bond, or agreement the defendant might show by answer that
33 a greater rate of interest than ten per cent. "was therein or thereby agreed for or received or taken," and if the proof sustained the allegation the court should render judgment for the principal, with ten per cent. interest, but that the interest should go to the school fund and the defendant should recover his costs.

This same provision was carried into the revision of 1865 (R. S. 1865, ch. 89, sec. 5, p. 401), and into the revision of 1879 (R. S. 1879, ch. 41, sec. 2727, p. 459), and into the revision of 1889 (R. S. 1889, ch. 90, sec. 5976, p. 1429).

The act of April 23d, 1891 (Acts 1891, p. 170), amended section 5976, R. S. 1889, only so far as to reduce the legal rate of interest for which a party might contract from ten per cent. to eight per cent; but by the act of April 21st, 1891 (Acts 1891, p. 170), it was provided by section 1 thereof as follows:

"Usury may be pleaded as a defense in civil actions in the courts of this State, and upon proof that usurious interest has been paid, the same, in excess of the legal rate of interest, shall be deemed payment, shall be credited upon the principal debt, and all the costs of the action shall be taxed against the party guilty of exacting usurious interest, who shall in no case recover judgment for more than the amount found due upon the principal debt, with interest, after deducting therefrom all payments of usurious interest made by the debtor, whether paid as commissions or brokerage, or as payment upon the principal, or as interest on said indebtedness."

Under this statute, therefore, the usurious interest paid can be set off or credited on the principal when the lender sues—that is, the statute permits this to be done only as a defense to or part payment of the debt. It does not give the borrower a right to sue for
34 and recover usurious interest already paid. In this respect the law is the same that it was before this statute was enacted. If this State statute governed in this case, the defendants would be entitled to the credits they claim.

But the plaintiff is a national bank, and therefore the statute of the United States controls the rights of the parties, and the State statute must yield. This was expressly so decided by the Supreme Court of the United States in Farmers', etc., National Bank *v.* Dearing, 91 U. S., 1, c. 33, where Mr. Justice Swayne, delivering the opinion of the court, said:

"The national banks organized under the act" (act June 3d, 1864, now chapter 3, title LXII, R. S. U. — 1878, p. 1003) "are instruments designed to be used to aid the Government in the administration of an important branch of the public service. They are means appropriate to that end. Of the degree of necessity which existed for creating them, Congress is the sole judge. Being such means, brought into existence for this purpose, and intended to be so employed, the States can exercise no control over them, nor in anywise affect their operation, except in so far as Congress may see proper to permit. Anything beyond this is 'an abuse, because it is the usurpation of power which a single State cannot give.' Against the national will 'the States have no power, by taxation or otherwise, to retard, impede, burthen, or in any manner control the operation of the constitutional laws enacted by Congress to carry into execution the power vested in the General Government.' * * * Whenever the will of the nation intervenes exclusively in this class of cases the authority of the State retires and lies in abeyance until a proper occasion for its exercise shall recur."

The impelling reason that called for this conclusion was
35 pointed out to be that the usury statutes of the several States differed widely, some forfeiting only the excess of interest, some the whole interest, and some the debt or demand as well as the interest, and it was held that Congress did not intend to permit such different consequences to flow from a violation of the Federal statute.

The section of the act of 1864 under consideration in that case has since been divided and is now sections 5197 and 5198, R. S. U. S. 1878. By section 5197 national banks are permitted to charge the same rate of interest as is lawful in the States in which they are located, and if no rate is so prescribed, then they can charge seven per cent.

Section 5198 provides that knowingly taking, receiving, reserving, or charging a greater rate of interest than section 5197 permits shall be deemed a forfeiture of the entire interest, and in case such usurious interest is paid the person paying it may "recover back, in an action in the nature of an action of debt, twice the amount of the interest thus paid from the association taking or receiving the same, provided such action is commenced within two years from the time the usurious transaction occurred."

At first it was held that the usurious interest, if paid, could be set off or allowed as a credit upon the principal when suit was brought to collect the principal, or it could be recovered in an independent action. National Bank of Madison *v.* Davis (U. S. circuit court, Indiana), 6 Central L. J., 106; Snyder *v.* Mt. Sterling National Bank (court appeals Ky.), 21 S. W., 1050; First National Bank of Newton

v. Turner (court appeals Ks.), 42 Pacific Rep., 936; National Bank of Auburn *v.* Lewis, 75 N. Y., 516; Overholt *v.* National Bank,
36 82 Pa. St., 490; Moniteau National Bank *v.* Miller, 73 Mo., 187.

But the Supreme Court of the United States has since held that usurious interest once paid cannot, under the Federal statute, be set off or allowed as a credit on the principal of the debt, but that the remedy given by that statute to the person paying usury is to recover double the interest so paid by an independent action is exclusive. Barnet *v.* National Bank, 98 U. S. L. C., 558, 9; Driesbach *v.* National Bank, 104 U. S., 52; Stephens *v.* Monongahela Bank, 111 U. S., 197; Carter *v.* Caruse, 112 U. S., 478.

The case of Brown *v.* Marion National Bank, 169 U. S., 416, decides nothing to the contrary, for in that case the usurious interest was not paid, but was included in the face of the note, and it was simply held, as it has always been the law, that the court would not lend its aid to the lender to recover usurious interest.

In Driesbach *v.* National Bank, 104 U. S., 52, Mr. Chief Justice Wiatt calls attention to the fact that the supreme court of Pennsylvania in National Bank *v.* Gruber, 91 Pa. St., 377, followed Barnett *v.* National Bank, 98 U. S., 555, and overruled its former decisions (that usurious interest might be set off against the principal debt) in the cases of Lewis *v.* National Bank, 72 Pa. St., 228, and Oberholt *v.* National Bank, 82 Pa. St., 490.

The rule declared by the Supreme Court of the United States was followed in National Bank *v.* Childs, 133 Mass., 248; National Bank *v.* Moon, 83 Iowa, 1 c., 743; Highley *v.* National Bank, 26 Ohio St., 75. In other words, the Federal statute has created a new right of action, but has not given a right of set-off as to such matters, while the statute of Missouri gives a right of set-off, but not a right of action.

It follows that this court must, as in duty bound, follow
37 the decisions of the Supreme Court of the United States in construing this Federal statute, and that under those decisions these defendants cannot set-off or be allowed credit for the usurious interest paid, but that they are reverted to the exclusive remedy afforded by that statute, of instituting an independent action to recover such usurious interest, and that the judgment of the circuit court, which proceeded on these principles, is correct. It also follows that the case of Moniteau National Bank *v.* Miller, 73 Mo., 187, was erroneously decided, and it is therefore overruled.

The judgment of the circuit court is affirmed.

All concur.

W. C. MARSHALL, *J.*

And afterwards, to wit, on the 1st day of March, 1900, the further following proceedings were had in said cause, viz:

CENTRAL NATIONAL BANK, Resp.,
v.
S. A. HASELTINE ET AL., App.

Come now the said appellants, by attorney, and file their motion for rehearing herein.

Which said motion for rehearing is in words and figures as follows, to wit:

In the Supreme Court of Missouri, October Term, 1899, Division No. 1.

THE CENTRAL NATIONAL BANK, Respondent,
vs.
S. A. HASELTINE ET AL., Appellants. No. 9037.

38

Motion for Rehearing.

Now come appellants in the above-entitled case and ask the court to grant a rehearing of the same, and as grounds therefor say:

I.

The doctrine of the decision of the supreme court of Missouri in Moniteau Bank *v.* Miller, 73 Mo., 187, which is directly overruled by your honors in this case, is unwarranted by the subsequent decision and laws.

II.

Said decision is supported by the late statute of Missouri—act of April 21, 1891—all previous Missouri cases to the contrary.

So said decisions are no longer authority or law in Missouri. So similar decisions of New York, Minnesota, etc., have been annulled by similar statutes.

III.

Your honor's decision is in direct conflict with the case of Snyder *v.* Bank, 21 S. W. Rep. (Ky.), 1050, which case is directly in accord with the Missouri case of Moniteau National Bank *vs.* Miller, 73 Mo., 187, and said Kentucky case is directly affirmed by the Supreme Court of the United States in the case of Brown *vs.* Marion National Bank, 169 U. S., 416.

39

IV.

The court seems to have overlooked the fact that the case of The Moniteau National Bank *vs.* Miller, 73 Mo., 187, was decided after and referred to the case of The Barnett National Bank, 98 U. S., 555; and in view of the late case of Brown *vs.* Marion National Bank, 169 U. S., 416, the case at bar should be reversed and the credit should be applied on the principal.

Very respectfully,

GEO. S. RATHBUN.
S. H. HASELTINE.

And afterwards, to wit, on the 14th day of March, 1900, the further following proceedings were had in said cause, viz:

* * * * * * *

CENTRAL NATIONAL BANK, Respondent,
vs.
S. A. HASELTINE ET AL., Appellants.

Now, at this day, the court having fully considered and understood the motions heretofore filed for rehearing herein, doth order that said motions be, and the same are hereby, overruled.

And afterwards, on the 5th day of April, 1900, the further following proceedings were had in said cause, viz:

40 CENTRAL NATIONAL BANK, Respondent,
vs.
S. A. HASELTINE ET AL., Appellants.

Now, at this day, there is presented to the Honorable Theodore Brace, presiding judge of division No. 1 of the supreme court of the State of Missouri, in chambers, a writ of error to the Supreme Court of the United States, a citation directed to said respondent, citing and admonishing it to appear at a Supreme Court of the United States on the 5th day of May, 1900; an assignment of errors, and a bond in the sum of five thousand dollars; which said writ of error is allowed, said citation signed, and said bond approved, ordered filed, and made a part of the record herein.

Which said assignment of errors is in words and figures as follows, to wit:

In the Supreme Court of the United States, October Term, 1900.

THE CENTRAL NATIONAL BANK, Respondent in Error,
vs.
S. A. HASELTINE ET AL., Appellant- in Error.

Assignment of Error and Prayer for Reversal.

Now come appellants in error and state to your honor that errors have been committed by the supreme court of Missouri against the rights of your appellants, in this:

I.

41 Appellants were entitled to the rights of certain credits applied upon the note of respondent under the Revised Statutes of the United States of 1878, sec. 5198.

II.

Appellants are entitled to the said credits under the said United States statute, *and* construed by the Supreme Court of the United States in the case of Brown *vs.* Marion National Bank, 169 U. S., 416.

III.

That the decision against appellants is also against the statutes of Missouri, act of April 21st, 1891, page 170.

IV.

That the decision against appellants is also against the prior decisions of Missouri. See Moniteau National Bank *vs.* Miller, 73 Missouri, 187. Which last case was subsequent to the case of Barnett *vs.* National Bank, 98 U. S., 555, and is indirectly approved in the case of Brown *vs.* Marion National Bank, 169 U. S., 416.

V.

Said judgment is for 8 % interest, when the law of Missouri only provides for 6 % when no rate is agreed upon or, as in this case, where the rate is usurious and is forfeited.

Appellants ask that the judgment in the above-entitled case be reversed, and that appellants be permitted to have their joint and rightful claims.

S. A. HASELTINE &
GEO. S. RATHBUN,
Att'ys for Appellants.

42 And which said bond is in words and figures as follows, to wit:

UNITED STATES OF AMERICA, *sct:*

Know all men by these presents that we, S. A. Haseltine, S. C. Haseltine, S. I. Haseltine, and L. K. Haseltine, as principals, and Augusta Haseltine and G. A. H. Clark, as sureties, are held and firmly bound unto the Central National Bank of Springfield, Missouri, executors and administrators, in the sum of five thousand and no $_{100}$ dollars; to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 19th day of March, A. D. 1900.

Upon this express condition, to wit: Whereas the above-named S. A. Haseltine, S. C. Haseltine, S. I. Haseltine, and L. K. Haseltine have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the cause above named by the supreme court of Missouri, division No. 1:

Now, if the above-named S. A. Haseltine, S. C. Haseltine, S. I. Haseltine, and L. K. Haseltine shall prosecute their said writ of error to effect and answer all damages and costs if they shall fail to make

good their plea, then this obligation to be void; otherwise to remain in full force and virtue.

S. A. HASELTINE. [SEAL.]
S. C. HASELTINE. [SEAL.]
L. K. HASELTINE. [SEAL.]
S. I. HASELTINE. [SEAL.]
G. A. H. CLARK. [SEAL.]
43 AUGUSTA HASELTINE. [SEAL.]

Signed and sealed in presence of—
REUBEN Y. THOMSON,
As to G. A. H. Clarke.

The above bond is hereby approved and ordered to be filed and made a part of the record.

THEO. BRACE, *Judge.*

The sureties herein having been examined and qualified by me, I hereby approve this obligation.

SARAH A. LATHAM,
U. S. Circuit Clerk,
[SEAL.] By REUBEN Y. JOHNSON, *D. C.*

UNITED STATES OF AMERICA, } ss:
Western District of Missouri, }

G. A. H. Clark, obligor in the within bond, being duly sworn, on her oath deposes and says that she resides as stated therein, and is worth, over and above all her debts and liabilities, the sum of fifteen thousand no $\frac{}{100}$ dollars, and that she owns real estate to that amount subject to execution in the State of Missouri.

G. A. H. CLARKE.

Subscribed and sworn to before me this 19th day of March, A. D. 1900.

SARAH A. LATHIM,
U. S. Clerk,
[L. S.] By REUBEN Y. THOMSON, *D. C.,*
Comm'r U. S. Cir. Court, Western Dist. of Mo.

UNITED STATES OF AMERICA, } ss:
Western District of Missouri, }

44 Augusta Haseltine, obligor in the within bond, being duly sworn, on her oath deposes and says that she resides as stated therein, and is worth, over and above all her debts and liabilities, the sum of seventy-five thousand no $\frac{}{100}$ dollars, and that she owns real estate to that amount subject to execution in the State of Missouri.

AUGUSTA HASELTINE.

Subscribed and sworn to before me this 19th day of March, A. D. 1900.

[L. S.]

SARAH A. LATHIM, *U. S. Clerk,*
By REUBEN Y. THOMSON, *D. C.,*
Comm'r U. S. Cir. Court, Western Dist. of Mo.

STATE OF MISSOURI, *ss:*

I, Jno. R. Green, clerk of the supreme court of the State of Missouri, certify that the foregoing is a full, true, and complete transcript of the record and proceedings in the cause entitled Central National Bank *vs.* S. A. Haseltine *et al.*, as fully and complete as the same appear- of record and on file in my said office.

Seal of the Supreme Court of Missouri.

In witness whereof I have hereunto set my hand as clerk and affixed the seal of said court. Done at office, in the city of Jefferson, this 16th day of April, A. D. 1900.

JNO. R. GREEN,
Clerk Supreme Court of Missouri.

Endorsed on cover: File No., 17,760. Missouri supreme court. Term No., 280. S. A. and S. C. Haseltine and S. I. and L. K. Haseltine, plaintiffs in error, *vs.* The Central National Bank of Springfield, Missouri. Filed May 12th, 1900.